ZOLKEFLY HARON

v.

YAHYA CHIK & ANOR

HIGH COURT MALAYA, MUAR
JEFFREY TAN J
[CIVIL SUIT NO: 22-18 OF 1999]
6 FEBRUARY 2001

TORT: *Defamation - Libel and slander - Publication of plaintiff's debts owing to defendant bank - Whether defamatory - Plea of justification - Whether available*

This is an action by the plaintiff against the defendants for libel and slander over oral and written remarks made concerning the status of the plaintiff's banking account with the second defendant bank.

In December 1998, the plaintiff as chairman and executive director of Syarikat EAP Enterprise Sdn Bhd ('EAP') applied to open a current account with the second defendant. When EAP's manager went to collect the cheque book from the second defendant, he was informed by the manager (the first defendant) that the plaintiff owed a personal debt to the second defendant and therefore the current account could not be approved.

On 5 January 1999, an employee of the second defendant published the oral statement made by the first defendant, to the plaintiff and his business associate and released to them without the plaintiff's consent, his customer account profile. Hence, the present action. The defendants pleaded justification.

Held:

[1] Truth or justification is an absolute defence to an action in libel or slander. If the statement is true, no amount of malice, bad faith or belief in the falsity of the statement will make it actionable. If people think the worst of the plaintiff when they hear the truth about him, then his reputation has only been reduced to the proper level.

[2] In the present case, the defendants had established the imputation upon which they were sued was true and had proved the truth of every defamatory fact alleged. Further, the customer account profile tallied with the truth.

[Plaintiff's claim dismissed.]

Case(s) referred to:
Dato' Musa Hitam v. SH Alattas & Ors [1991] 1 CLJ 315
Hasnul Abdul Hadi v. Bulat Mohamed & Anor [1978] 1 MLJ 75

Other source(s) referred to:
Libel and Slander, Gatley, 9th, edn, paras 26.11, 26.13
The Law of Defamation in Singapore and Malaysia, Keith R Evans, 2nd edn, p 49

For the plaintiff - Amrit Pal Singh; M/s Sukhdev & Amrit
For the defendants - Kumar Kanagasingam; M/s Allen & Gledhill

Reported by John Henry Louis

JUDGMENT

Jeffrey Tan J:

This is an action by an erstwhile customer (plaintiff) of the 2nd defendant bank against the defendants (the 1st defendant was the manager of the 2nd defendant's branch at 51 & 53 Jalan Permas Jaya, Masai Johore Baru at the material time) for alleged defamatory imputation over oral and written remarks or statements made by the defendants about the status of his banking account.

According to the facts asserted in the statement of claim, related herein to set the scene, sometime in December 1998, the plaintiff as chairman and executive director of Syarikat EAP Enterprise Sdn Bhd (EAP) was at the 2nd defendant's branch at 51 & 53 Jalan Permas Jaya, Masai Johore Baru, for the purpose of opening a current banking account for EAP. Later, in January 1999, the plaintiff instructed the manager of EAP to collect the cheque book for that current account from the 2nd defendant's said branch. However, that manager was informed by the 1st defendant:

> bahawa plaintif ada hutang peribadi dengan Defendan Kedua dan oleh kerana hutang peribadi ini belum dijelaskan maka pembukaan Akaun Semasa untuk (EAP) tidak boleh diluluskan dan/atau ditangguh/ditahan.

On 5 January 1999, at the 2nd defendant's branch at Taman Tun Dr Ismail, an employee of the 2nd defendant published the said oral statement to the plaintiff and to one of his business associates, and that employee released, without the consent of the plaintiff, the "customer account profile" of the plaintiff to the plaintiff and to his business associate. To cut the (pleaded) story short, the plaintiff pleaded that the oral statements and the written statements in the "customer account profile" were defamatory, as he was not indebted to the 2nd defendant at the material time. *Inter alia*, the defendants pleaded justification.

The pleadings, overall, running in total into 104 pages, in the main of "facts", were both long and protracted. So, chances were, would it not be, that all material facts would have been pleaded. "In a libel the words used are of material facts and must therefore be set out verbatim in the statement of claim, preferably in the form of quotation: it is not enough to describe their substance, purport or effect. The law requires the very words of the libel to be set out in the declaration in order that the court may judge whether they constitute a ground of action" (Gatley on *Libel and Slande*r, 9th, edn, para 26.11). "The general principles governing the pleading of the actual words in libel also apply to slander. Thus, in slander, the actual words spoken must be set out verbatim 'in order that the defendant may know the certainty of the charge, and may be able to shape his defence'. It is not sufficient to allege that the slanderer used such and such words or to that effect". (Gatley (*ibid*) para 26.13). In the present case, the words used and the actual words spoken were not set out *verbatim*. But yet, there was never any application for an order requiring the plaintiff to give particulars. Still, it would appear from the opening statements of both learned counsel, that the defendants knew the certainty of the charge of libel.

When this action was called for trial, both learned counsel (Mr Amrit Pal Singh for the plaintiff, and Mr Kumar Kanagasingam for the defendants) firstly tendered an agreed bundle of documents (AB), and then separately tendered their own bundle of documents (PB, and, DB). Amongst the many documents in those bundles were two copies of the "customer account profile" of the plaintiff (PB231 & 232), the 2nd defendant's ledger relating to the erstwhile account of the plaintiff (PB234), two letters of the plaintiff to the 2nd defendant (DB18 & 19), and a letter of the 2nd defendant to the plaintiff (DB2O).

Mr Amrit then informed the court that it is the plaintiff's case that the defendants published and communicated to third parties, namely to one Jensen Tan and one Choong Nam Fo, the following words, "that the plaintiff had a personal debt with the 2nd defendants, and that therefore EAP could not open its current account with the 2nd defendant", and that the defendants released, without the consent of the plaintiff, the "customer account profile" of the plaintiff to the said Choong Nam Fo. Mr Amrit added that the facts asserted in the words spoken to Jensen Tan and in the "customer account profile" of the plaintiff were false. And then Mr Amrit informed that both parties agree (so it was later affirmed by Mr Kumar) that a decision on the question "whether the statements in PB231 & 232 are true or false, in the light of the statements in PB234 and DB18-20" could dispose of the cause or matter or could render the trial of the cause or matter unnecessary; in the event that

the decision is resolved in favour of the defendants, the plaintiff's entire claim may be dismissed with costs; otherwise, the entire cause or matter shall be tried.

With regard to the trial of that preliminary question, Mr Amrit furthermore informed that both parties accept PB231 & PB232, PB234, and, DB18-20, as agreed documents, – agreed as to the content and also as to the dispensation of formal proof – and that both parties rely solely on the oral submissions of counsel.

With those preliminaries settled by consent, Mr Kumar submitted as follows. "The only issue is whether the statements in PB231 & 232 are true or false in the light of the statements in PB234 and DB18-20." All parties accept the truth of the statement in PB234 and DB18-20. PB231 was a computer printout intituled "customer account profile". It stated that there was a "bad debt W/O". PB232 stated the status of the account as "bad debt written off". A debt of RM7,469.83 was written off. "W/O" meant written off. PB234 was the ledger account for the period 30 June 1994 – 27 April 1995. There were no credit entries prior to 14 April 1995. On 14 April 1995, the plaintiff paid RM150,000 into his account. But yet there was an outstanding balance. In DB18, the plaintiff applied to the 2nd defendant for a rebate of the interest charged. The plaintiff acknowledged that there was an outstanding balance, notwithstanding his payment of RM150,000 into his account. On 27 April 1995, the 2nd defendant wrote off the outstanding balance of RM7,469.83. PB231 and 232 are consistent with the true status of the plaintiff's account. Nothing was said of monies due and owing. "Truth is an absolute defence." Lastly, he said that the defendants have demonstrated that the so-called defamatory statements are true.

Mr Amrit submitted however that the plaintiff owed nothing to the 2nd defendant. On 14 April 1995, the plaintiff paid RM150,000 into his account. On that day, the plaintiff requested for a rebate of the interest charged. On 27 April 1995, the account had been settled. Yet, PB231 & 232 falsely imputed that the plaintiff was a borrower with his account status as "bad debt W/O". PB231 & 232 do not reflect PB234. "PB234 contains the truth, but not PB231 & 232." The statements in PB231 & 232 cannot be justified by PB234. The defendants must prove justification. In view of the differences in PB231-232, and PB234, justification has not been proved.

That last remark drew a quick riposte from Mr Kumar, who said that the plaintiff had not pointed out the differences. Mr Kumar further replied that it is clear that the plaintiff was a borrower who was indebted to the 2nd

defendant, and that there was an outstanding sum, notwithstanding the credit of RM150,000. PB232 merely stated that a bad debt of RM7,469.83 was written off. What were said in PB231 and 232 were true. Mr Amrit just replied that the 2nd defendant was not justified to have stated what were in PB231 & 232.

Evidently, all parties unequivocally accept the truth of the statements in PB234 – the 2nd defendant's ledger of the banking account of the plaintiff. That PB234 is now reproduced below:

Date	Details	Debit	Credit	Balance	Credit/ debit in Brackets	Balance
31.6.94	C/F			143,611.83		72,205.47
28.7.94	Misc Dr	500		144,111.83	-	-
31.7.94	Int	1395.02		145,506.85	1395.02	73,600.49
31.8.94	Int	1401.20		146,108.05	1401.20	75,001.69
30.9.94	Int	1369.50		148,277.55	1369.50	76,371.19
31.10.94	Int	1403.68		149,689.23	1403.68	77,774.87
30.11.94	Int	1365.40		151,046.83	1365.60	79,140.47
31.12.94	Int	1450.06		152,473.88	1427.05	80,567052
31.5.95	Int	1450.06		153,923.94	1450.06	82,017.58
28.3.95	Misc. Dr/Chng of shr	49.75		155,303.41		
31.3.95	Int	1427.051		156,797.62	1494.21	84,841.51
14.4.95	Cash		15,000	6,797.62		
30.4.95	Int	672.21		7,469.83	672.21	85,513.72
27.4.94	Amount write off against 118		7460.83	Nil	(7,469.83)	78,043.89
27.4.95	118 OD transferred to 118w/back	-	-	-	(78043.89)	Nil
27.4.95	A/c regularised & settled	-	-	-	-	-

a Now, PB234 was the record of the credit and debit entries, for the period 30 June 1994 – 27 April 1995. The entries in that ledger, they plainly say that the plaintiff, up and until 14 April 1995, was indebted to the 2nd defendant in the sum of RM156,797.62. They also plainly say, that the plaintiff was still indebted to the 2nd defendant, in the sum of RM6,797.62, despite *b* the credit of RM150,000. After 14 April 1995, no other credits were posted in the ledger. Therefore, there could be no argument that up and until 27 April 1995, the plaintiff was still indebted to the 2nd defendant, although by then in a sum reduced to RM6,797.62. The total outstanding sum, quite clearly, was never fully settled, in the sense that the total outstanding sum was never *c* fully paid or discharged. Subsequent entries say, that the debit balance of RM7,469.83 (it being the said RM6,797.62 plus interest of RM672.21) was written off on 27 April 1995. Thus, on 27 April 1995, the account was fully "settled", but only because the outstanding sum of RM7,469.83 was written off by the 2nd defendant.

d That unspecified truth that all parties unequivocally accept may now be specified. The parties accept as truth, that the plaintiff was indebted to the 2nd defendant in the sum of RM7,469.83, that that outstanding sum was written off by the 2nd defendant, and, that the plaintiff after 27 April 1995 was no longer indebted to the 2nd defendant. The parties also accept as truth, *e* that the plaintiff after credit of RM150,000 into his outstanding account, applied for a rebate (see DB18) of the interest charged, and, that the 2nd defendant confirmed to the plaintiff (see DB2O) that all outstanding sum had been settled as on 27 April 1995.

f But what were imputed in PB231 & 232 that were false? Both PB231 & 232 are reproduced below.

PB231

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CIFFIC82          MALAYAN BANKING BERHAD                  05/01/99    11:13
RETURN            INQ CUSTOMER ACCOUNT PROFILE                        M1427B1

CUSTOMER NUMBER   2754729      NAME ZOLKEFLY BIN HARON
ID NUMBER         7210278
NEW IC NUMBER     640109015325

CUSTOMER TYPE PER BUMI          CUSTOMER CLASS          PERSONAL

SEL ACCOUNT NUMBER      PRODUCT   CARD NAME/INT RATE   OPEN DATE REL STATUS
BAL DESCRIPTION                   HOLD/MISC CODES      CREDIT LIMIT CURR BALANCE

NEXT RESPONSE:    INQUSAP NEXT KEY:

CB 502200 ACCOUNT ROLE NOT FOUND              *CD 502200 ACCOUNT ROLE NOT FOUND
CB 5105501  CREDIT CARD CUSTOMER NOT FOUND
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g

h

i

CUSTOMER LIABILITY SYSTEM

I/C NUMBER : 7210278 01 NAME: ZOLKEFLY BIN HARON
A/C STATUS : NORMAL CAPACITY : BORROWER

A/A : 95/90228 BORROWER
H/L NUMBER : 0000 BRANCH: TAMAN TUN DR. ISMAIL
DATE RECEIVED : 19/01/88 REVIEW : NOT SUBJECT REVIEW
APPROVAL DATE : 19/01/88 A/C STATUS :
APPROVAL LEVEL : BRANCH LEVEL A/C STATUS : BAD DEBT W/O
DESIGNATION : BUMI-CONSUMER REST STATUS : RESIDENT
A/A CLASS'N : NORMAL ECON SECTOR : OTH SECTORS
RELATED TO : NOT APLICABLE OFFICER ID :
01 FACILITY INT % C LIMIT SECURITY V VALUATION
OD .000 7,469.83 CLEAN .00
>PF5=PREV SCRN> <PF6=NEXT SCRN> <PF8=MAIN MENU> <PF10=PRT AA. ,PF11=NEXT ENQR.>
*** CUSTOMER ENQUIRY COMPLETE.

PB232
CIFFICA3 MALAYAN BANKING BERHAD 05.01.99 11:12
STATUS PROFILE OF CUSTOMER'S STATUS M1427B1 STEP

OLD IC NUMBER : 7210278 PASSPORT NBR:
BUS REG/REG CERT NBR : NEW IC NBR :

SEL CUSTOMER'S STATUTES CUSTOMERS'S NAME IN BMC/OCISS/CLS
BMC - NOT LISTED OLD TC/BR/RC/NEW IC/PP NBR IND
BANKRUPTCY - NOT LISTED
BAD DEBT WRITTEN-OFF ZOLKEFLY B HARON
7210278
PRESS "PF5" TO VERIFY STATUS OF CUSTOMER'S SAFE, MARS OR CREDIT CARD ACCOUNT
NEXT RESPONSE: STATUS NEXT KEY:
CB510547 ENTER X IN SEL TO VIEW DETAIL* CB510548 ENTER OLD IC/PP/NIC/BR /NAME*

CIFFICB4 MALAYAN BANKING BERHAD O5/01/99 11.13
BADDEBTS WRITTEN-OFF- STATUS INQUIRY M1427B1 STEP

IC/BUS REG NO : 7210278 1 TOTAL PAGE: 1
NAME : ZOLKEFLY BIN HARON

STATUS : BAD DEBTS WRITEEN OFF
APPROVAL DATE : 19/01/88
APPROVAL LEVEL : BRANCH LEVEL
BRANCH : TMN TUN DR ISMAIL
STAFF/DIR RELATED : NOT APPLICABLE
AMOUNT : 7,469.83

NEXT RESPONSE : STATUS NEXT KEY:

CB503282 LAST PAGE: * CB510557 HIT ENTER TO RETURN TO STATUS*
CB510548 ENTER OLD IC/PP/NIC/BR/NAME*

Mr Amrit contended that PB231 & PB232 imputed that the plaintiff was a borrower with the status of his account as "bad debt w/o". Mr Amrit argued that there was never any bad debt, as the account had been settled. With respect, it would appear that the plaintiff would not read PB231 & 232 as a whole. PB232 was the first computer printout, whilst PB231 was the second computer printout. That is evident from the time printed on the top right hand side of PB232 as 11:12, and on the top right hand side of PB231 as 11:13. PB232 stated that a bad debt of RM7,469.83 was written off. In the following PB231 with the full particulars of the account, the status of the account was stated as "bad debt W/O". Both PB231 & 232 stated a bad debt of

RM7,469.83 was written off, an imputation entirely consistent with the truth. Perhaps, the meaning of the particular "limit security 7,469.83 clean" in PB231 was not all that clear. But in relation to the status of plaintiff's account, the other particulars in PB231 clearly stated that there was nothing owing to the 2nd defendant, on 5 January 1999. At the bottom of PB231, it was stated that the credit facility granted to the plaintiff on 19 January 1988 was an overdratt, but it was also stated that the amount outstanding was ".00". When read as a whole, it is unmistakable that PB321 and 232 stated that a bad debt of RM7,469.83 was written off but also that nothing was owing on the account. That was all that was imputed by the total statements in PB231 & 232. Objectively, there were no words in their ordinary and natural meaning capable of any defamatory imputation, unless the words "bad debt" were read in isolation.

Admittedly, it is true that as at 5 January 1999 the plaintiff owed nothing to the 2nd defendant. But it also true that nothing was imputed in PB231 or 232 that the plaintiff was indebted to the 2nd defendant or that the plaintiff was still a borrower or debtor. How it could be so contended is a mystery. The fact of the matter was, that an outstanding debt of RM7,469.83 was written off. After the credit of RM150,000, the plaintiff applied for a rebate of the interest charged, and then the 2nd defendant wrote off the remaining debt. Only in that manner, was the remaining debt of RM7,469.83 "settled". Hence, PB231 and 232 only reflected what had happened. The remaining debt was written off, but not the records. And the 2nd defendant was entitled to its records.

The plaintiff took umbrage, but the "customer account profile" of his account was not false. And "it is not actionable maliciously to publish the truth" (*Gatley (ibid)* para 11.1). "Truth or justification, is an absolute defence to an action in libel or slander. If the statement is true, no amount of malice, bad faith or belief in the falsity of the statement will make it actionable. If people think the worst of the plaintiff when they hear the truth about him, then his reputation has only been reduced to the proper level" (*The Law of Defamation in Singapore and Malaysia* by Keith R Evans, 2nd edn, p. 49; see also *Hasnul Abdul Hadi v. Bulat Mohamed & Anor* [1978] 1 MLJ 75, *Dato' Musa Hitam v. SH Alattas & Ors* [1991] 1 CLJ 315). In the present case, the defendants have clearly established that the imputation in respect of which they are sued is true. The defendants have proved the truth of every defamatory fact alleged. The "customer account profile" tallies with the truth (PB234). Until "written off", there was a bad debt.

All parties agree that if the statements in PB231 & 232 are true, that the plaintiff's claim then may be dismissed with costs. That still holds true. Accordingly, and for the above reasons, the plaintiff's claim is dismissed with costs.